

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

**In Case No. 2003-0613, State of NH v. Ruth Retzke, the
court on December 1, 2004, issued the following order:**

Following a jury trial, the defendant, Ruth Retzke, was convicted on two counts of second degree assault. See RSA 631:2 (1996). On appeal, she contests the sufficiency of the evidence. See State v. Pittera, 139 N.H. 257, 260 (1994) (when defendant contests sufficiency of the evidence both at close of State's case and at close of all evidence test on appeal is the same). We affirm.

The defendant contends that the State failed to prove two elements of the charges: the identity of the perpetrator of the fifteen-month-old victim's injuries and the cause of the injury. The evidence included that the victim was uninjured when she arrived at the defendant's home, the location of the injury, and that the other two adults who later had access to the victim at the defendant's home did not inflict the injury. The defendant gave several conflicting statements during the course of the investigation including that she had not seen any bleeding; some of these statements were contradicted by the examining physician and the victim's parents. All of this evidence combined with the physical evidence and the defendant's subsequent, inadvertent admission that she had observed the victim bleeding provided sufficient evidence of the identity of the perpetrator and the cause of the injury. Even if we assume without deciding that the evidence was only circumstantial, we find no error in the trial court's rulings. After considering the evidence in the light most favorable to the State and examining each evidentiary item in the context of all the evidence, we conclude there was sufficient evidence to exclude all rational conclusions except guilt. See State v. Cobb, 143 N.H. 638, 658 (1999) (correct analysis is not whether all possible conclusions have been excluded but rather whether all rational conclusions based on the evidence have been excluded).

Affirmed.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**

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